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SIVARAJ CHANDRAN v. SURUHANJAYA PILIHAN RAYA MALAYSIA

HIGH COURT MALAYA, KUALA LUMPUR
NORDIN HASSAN J
[JUDICIAL REVIEW NO: WA-25-1-01-2019]
10 JANUARY 2019

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ADMINISTRATIVE LAW: *Judicial review – Application to quash decision – Decision by Election Commission in letter signed by Chairman – Applicant no longer eligible to vote or stand for election for five years – Whether letter contained decision by a decision-maker – Whether decision adversely affected applicant – Whether decision final and disposed of applicant's right – Whether amenable to judicial review – Rules of Court 2012, O. 53 r. 2(4)*

C

ELECTION: *Petition – Allegation of corrupt practice – Report of Election Judge – Election Commission decided applicant no longer eligible to vote or stand for election for five years based on Election Judge's report – Whether report in accordance with s. 37(1) of Election Offences Act 1954 – Whether report showed that corrupt practice committed with knowledge and consent of applicant – Whether decision of Election Commission in accordance with law – Election Offences Act 1954, s. 37(1)(a)(i), (3)*

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WORDS & PHRASES: *'knowledge and consent' – Election Offences Act 1954, s. 37(1)(a)(i) – Whether word 'and' to be read conjunctively – Whether to be read as 'or' contrary to plain meaning of provision*

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An election petition was filed to challenge the election result for Parliament Constituency of Cameron Highlands ('P078') in the 14th General Election in which the applicant was elected as the Member of Parliament. The petition was filed pursuant to s. 32(c) of the Election Offences Act 1954 ('Act 5') on the ground that there was corrupt practice committed by the applicant or with his knowledge or consent. Having heard the evidence from both parties the Election Judge found that corrupt practice was committed in connection with the election, with the knowledge of the applicant and declared that the election for P078 void and sent a report to the Election Commission ('EC'). The EC gazetted the Election Judge's report and announced that P078 Cameron Highlands' Parliamentary seat was vacated and a by-election would be held. The applicant did not appeal against the Election Judge's decision but sought confirmation on his qualification to stand as a candidate for the by-election. The EC responded, by a letter dated 28 December 2018, stating that the applicant was not qualified to stand as a candidate or to vote in any election for the next five years from 13 December 2018. Dissatisfied, the applicant filed the judicial review application on the ground that the EC failed to take into account that the Election Judge's report was not in accordance with s. 37(1) of Act 5 and, as

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such, was defective. The applicant contended that the Election Judge's report only stated that the corrupt practice was committed with the knowledge of the applicant but nothing about the applicant's consent to this corrupt practice and thus contravened sub-s. 37(1)(a)(i) of Act 5. The respondent, at the outset, raised a preliminary issue that the response by the EC *vide* its letter dated 28 December 2018 was not a 'decision' envisaged under O. 53 r. 2(4) of the Rules of Court 2012 ('ROC') and, therefore was not amenable to judicial review.

Held (dismissing application with costs):

(1) The letter, issued by the EC and signed by its Chairman, stated that the applicant could not vote or stand for election for the next five years from 13 December 2018. As such, the letter contained a decision by a decision-maker that had adversely affected the applicant who was no longer eligible to vote or stand for election for five years. The decision was final and had disposed of the applicant's right to vote and contest in the election. Therefore, it was a decision envisaged under O. 53 r. 2(4) of the ROC which was amenable to judicial review. (paras 25-27)

(2) Subsection 37(1)(a)(i) of Act 5 clearly states that the Election Judge shall report in writing, among others, as to whether the corrupt practice has or has not been proved to have been committed by or 'with the knowledge and consent' of the candidate. The word 'and' in the phrase 'knowledge and consent' in its plain grammatical meaning has to be read conjunctively. To read the word 'and' as 'or' was contrary to the plain meaning of the provision and with no acceptable justification. (paras 34-36)

(3) The Elections Judge's report, read in totality, showed that corrupt practice was committed with the knowledge and consent of the applicant. This was consistent with the judgment of the Election Judge. In the circumstances, the election Judge's report had complied with the requirement of sub-s. 37(1)(a)(i) of Act 5 and as such, sub-s. 37(3) is applicable wherein the applicant was subject to the same incapacities as if at the date of the Election Judge's report the applicant had been convicted of corrupt practice. The decision of the EC was in accordance with the law and was not tainted with any illegality, irrationality or unreasonableness that warranted a curial intervention. (paras 40-42, 44 & 45)

Case(s) referred to:

Ahli-ahli Suruhanjaya Yang Membentuk Suruhanjaya Siasatan Mengenai Rakaman Klip Video Yang Mengandungi Imej Seorang Yang Dikatakan Peguambela Dan Peguamcara Berbual Melalui Telefon Mengenai Urusan Pelantikan Hakim-Hakim v. Tun Dato' Seri Ahmad Fairuz Dato' Sheikh Abdul Halim & Other Appeals [2012] 1 CLJ 805 FC ***(refd)***

A *Ang Gin Lee v. PP [1991] 2 CLJ 857; [1991] 1 CLJ (Rep) 13* ***(refd)***
Dato Seri Anwar Ibrahim v. PP [1999] 1 CLJ 537 ***(refd)***
Dr Koay Cheng Boon v. Majlis Perubatan Malaysia [2012] 4 CLJ 445 FC ***(refd)***
Raymond Chia & Anor v. PP [1985] 2 CLJ 457; [1985] CLJ (Rep) 260 ***(refd)***
Wee Choo Keong v. Ketua Pengarah Perkhidmatan Awam, Malaysia [2011] 3 CLJ 331 HC ***(refd)***

B **Legislation referred to:**
Courts of Judicature Act 1964, s. 3
Election Offences Act 1954, ss. 11(2), 32(c), 37(1)(a)(i), (3), (4)
Rules of Court 2012, O. 53 r. 2(4)

C *For the applicant - Vasanthi Arumugam, Vasanthan Gopalan, Raja Sekaran, Noor Farazidah & Dinesh Kumasekar; M/s Vas & Co*
For the respondent - Suzana Atan, Narkunavathy Sundaresan & Azizan Arshad; SFCs

Reported by S Barathi

D **JUDGMENT**

Nordin Hassan J:

Introduction

[1] This is the applicant's judicial review application seeking among E others the following reliefs:

(i) an order of *certiorari* to quash the decision of the Election Commission *vide* letter dated 28 December 2018 declaring that the applicant is not qualified to stand for election or to vote in any election for the duration of five years from 13 December 2018.

F (ii) a declaration that the Election Commission's decision is disproportionate, excessive and oppressive against the applicant.

(iii) a declaration that the Election Commission's decision is null and void.

The Salient Facts

G **[2]** The applicant was elected as Member of Parliament for Parliament Constituency of Cameron Highlands (P.078) in the 14th General Election held on 9 May 2018.

[3] On 4 June 2018, Manogaran Marimuthu, one of the candidates for H P.078, filed an election petition challenging the said election result pursuant to s. 32(c) of the Election Offences Act 1954 ('Act 5'). The ground for the petition is that there was corrupt practice committed by the applicant or with his knowledge or consent.

[4] On 30 December 2018, having heard the evidence from both parties, I the election judge found that corrupt practice was committed in connection with the election, with the knowledge of the applicant and declared that the election for P.078. Cameron Highlands held on 9 May 2018 was void.

[5] The election judge, at paras. 69 and 70 of her grounds of judgment said this:

> [69] Therefore, I find that corrupt practice was committed in connection with the election with the knowledge of the Respondent (applicant) under section 32(c) of Act 5. Consequentially, pursuant to section 36(1) of Act 5, I declare that the election for the Parliament Constituency of Cameron Highlands P.078 held on 9.5.2018 was void.
>
> [70] With regards to section 37 of Act 5, I will certify this decision to the Election Commission and report that corrupt practice has been proved to have been committed with the knowledge and consent of the Respondent (Applicant) at the election, namely the giving of money to the voter to induce the voter to vote. However, I will not report any person who have been proved at trial to be guilty of any corrupt practice because of the inconsistencies in the evidence of the Petitioner's own witnesses as to the identity of the person who had actually given the money.

[6] On 13 December 2018, the Election Judge sent a report to the Election Commission where in the report, the Election Judge concluded as follows:

> Oleh yang demikian, saya mendapati bahawa terdapatnya perbuatan rasuah berkaitan dengan pilihan raya tersebut yang telah dilakukan dengan pengetahuan responden selaras dengan Seksyen 32(c) Akta 5. Justeru itu, selaras dengan seksyen 36(1) Akta 5, saya mengisytiharkan bahawa pilihan raya bagi kawasan Parlimen Cameron Highlands (P.78) yang diadakan pada 9 Mei 2018 adalah terbatal.

[7] Thereafter, the Election Commission gazetted the said Election Judge's report as the 'report of an election judge under sub-s. 37(4)' and also announced that P. 078, Cameron Highlands' Parliamentary seat was vacated and that a by-election to be held on 26 January 2019 with the nomination day on 12 January 2019.

[8] The applicant did not appeal against the said decision of the Election Judge made on 30 November 2018 which declared the election for P.078 void.

[9] Next, by letter dated 11 December 2018 to the Election Commission, the applicant sought confirmation on his qualification to stand as candidate for the Cameron Highlands by-election.

[10] The Election Commission responded by letter dated 28 December 2018 stating that the applicant is not qualified to stand as a candidate or vote in any election for the next five years from 13 December 2018.

[11] Dissatisfied with the Election Commission's response, the applicant filed this judicial review application.

A **The Grounds For Judicial Review Application**

[12] The main ground for this judicial review application contended by the applicant is the failure of the Election Commission to take into account that the Election Judge's report dated 13 December 2018 is not in accordance with sub-s. 37(1) of Act 5 and as such is defective.

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[13] It is the applicant's contention that the Election Judge's report only states that the corrupt practice was committed with the knowledge of the applicant but nothing about the applicant's consent to this corrupt practice. This contravened sub-s. 37(1)(a)(i) which requires the Election Judge to report in writing whether the corrupt practice has or has not been proved by or with the knowledge and consent of the candidate.

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[14] The applicant further contends that the Election Commission has failed to consider the Election Judge's report which states that the Election Judge would not report any person as being guilty of any corrupt practice because of inconsistencies in the evidence.

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The Respondent's Submission

[15] At the outset, the respondent has raised a preliminary issue that the response by the Election Commission *vide* letter dated 28 December 2018 is not a 'decision' as envisaged under O. 53 r. 2(4) of Rules of Court 2012 and as such not amenable to judicial review.

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[16] The respondent further submits that the word 'and' in the phrase 'with the knowledge and consent' under sub-s. 37(1)(a)(i) must be read disjunctively and not conjunctively. As such the Election Judge's report is in compliance with the said subsection.

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Findings And Decision Of This Court

[17] As mentioned earlier, the preliminary issue raised by the respondent is that the letter from the Election Commission dated 29 December 2018 is not a 'decision' envisaged under O. 53 r. 2(4) Rules of Court 2012 as the letter is only a response to the query by the applicant and therefore not amenable to judicial review.

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[18] In this regard, for ease of reference, O. 53 r. 2(4) as following:

> (4) Any person who is adversely affected by the decision, action or omission in relation to the exercise of the public duty or function shall be entitled to make the application.

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[19] The 'decision' under O. 53 r. 2(4) refers to 'decision' in relation to the exercise of public duty and function and the ambit for the reviewable decision is wide. If a decision by a decision maker adversely affects a person, that person has the right to make an application for judicial review under O. 53 r. 2(4).

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[20] The word 'decision' is not defined under the Rules of Court 2012. However s. 3 of the Courts of Judicature Act 1964 defined the word 'decision' as follows:

> 'decision' means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties.

[21] The apex court has discussed the word 'decision' under s. 3 of the Courts of Judicature Act and explained that the test whether it is a 'decision' is whether it finally disposes the rights of parties.

(see *Ang Gin Lee v. PP* [1991] 2 CLJ 857; [1991] 1 CLJ (Rep) 13; [1991] 1 MLJ 498, *Raymond Chia & Anor v. PP* [1985] 2 CLJ 457; [1985] CLJ (Rep) 260; [1985] 2 MLJ 436, *Dato Seri Anwar Ibrahim v. PP* [1999] 1 CLJ 537; [1999] 1 MLJ 321).

[22] On the same issue, it is also instructive to make reference to the Federal Court case of *Ahli-ahli Suruhanjaya Yang Membentuk Suruhanjaya Siasatan Mengenai Rakaman Klip Video Yang Mengandungi Imej Seorang Yang Dikatakan Peguambela Dan Peguamcara Berbual Melalui Telefon Mengenai Urusan Pelantikan Hakim-Hakim v. Tun Dato' Seri Ahmad Fairuz Dato' Sheikh Abdul Halim & Other Appeals* [2012] 1 CLJ 805; [2011] 6 AMR 381 where it states:

> [26] It is a trite law that the purpose of an order of *certiorari* is to quash the legal effect of a decision. In England, in the case of *Council of Civil Service Unions v. Minister for Civil Service* [1984] 3 All ER 935, the House of Lords held that for a decision to be susceptible to the Court's reviewing powers, there must first be a decision by a decision maker or a refusal by him to make a decision, and, the decision must affect the aggrieved party by either altering his rights or obligations or depriving him of the benefits which he has been permitted to enjoy.

[23] In another case, *Wee Choo Keong v. Ketua Pengarah Perkhidmatan Awam, Malaysia* [2011] 3 CLJ 331, this issue of a 'decision' has been approached in the following manner:

> [32] ... Looking at the content of the letter in its entirety, I am satisfied that the applicant would be affected by the decision of the respondent as contained in the letter and therefore the decision is amendable to judicial review. On this issue, I refer to the oft-cited case of *Council of Civil Service Union & Ors v. Minister for Civil Service* [1984] 3 All ER 935 where Lord Diplock said at p. 408 as follows:
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> > Judicial review, now regulated by RSC, O. 53, provides the means by which judicial control of administrative action is exercised. The subject matter of every judicial review is a decision made by some person (or body of person) whom I will call the 'decision-maker' or else a refusal by him to make a decision.

A To qualify as subject for judicial review the decision must have consequences which affect some person (or body or person) other than the decision-maker, although it may affect him too. It must effect such other person either:

(a) by altering rights or obligations of that person which are
B enforceable by or against him in private law; or

(b) by depriving him of some benefit or advantage which either (i) he has in the past been permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some
C rational grounds for withdrawing it on which he has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or (ii) he has received assurance from the decision maker will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be
D withdrawn. (I prefer to continue to call the kind of expectation that qualifies a decision for inclusion in class (b) a 'legitimate expectation' rather than a 'reasonable expectation', in order thereby to indicate that it has consequences to which effect will be given in public law, whereas an expectation or hope that some benefit or advantage would continue to be enjoyed,
E although it might well be entertained by a 'reasonable' man, would not necessarily have such consequences ...' ...

His Lordship said further:

For a decision to be susceptible to judicial review the decision-maker must be empowered by public law (and not merely, as in
F arbitration, by agreement between private parties) to make decision that, if validly made, will lead to administrative action or abstention from action by an authority endowed by law with executive power, which have one or other of the consequences mentioned in the preceding paragraph. The ultimate source of the decision-making power is nearly always nowadays a statute or
G subordinate legislation made under the statute; but in the absence of any statute regulating the subject matter of the decision the source of the decision-making power may still be the common law itself, ...

[24] Reverting to the present case, it is relevant to reproduce the said letter
H from the Election Commission dated 28 December 2018 which is the following:

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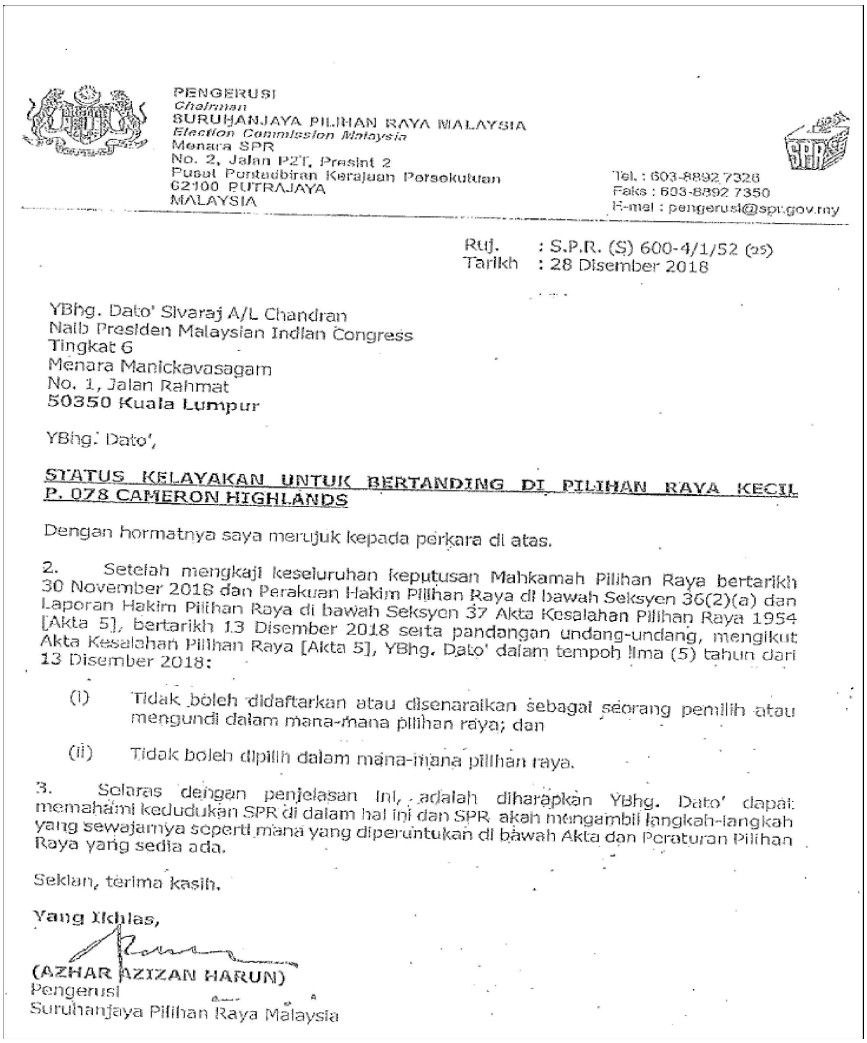

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Tarikh : 28 Disember 2018

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YBhg. Dato',

STATUS KELAYAKAN UNTUK BERTANDING DI PILIHAN RAYA KECIL P. 078 CAMERON HIGHLANDS

Dengan hormatnya saya merujuk kepada perkara di atas.

2. Setelah mengkaji keseluruhan keputusan Mahkamah Pilihan Raya bertarikh 30 November 2018 dan Perakuan Hakim Pilihan Raya di bawah Seksyen 36(2)(a) dan Laporan Hakim Pilihan Raya di bawah Seksyen 37 Akta Kesalahan Pilihan Raya 1954 [Akta 5], bertarikh 13 Disember 2018 serta pandangan undang-undang, mengikut Akta Kesalahan Pilihan Raya [Akta 5], YBhg. Dato' dalam tempoh lima (5) tahun dari 13 Disember 2018:

(i) Tidak boleh didaftarkan atau disenaraikan sebagai seorang pemilih atau mengundi dalam mana-mana pilihan raya; dan

(ii) Tidak boleh dipilih dalam mana-mana pilihan raya.

3. Selaras dengan penjelasan ini, adalah diharapkan YBhg. Dato' dapat memahami kedudukan SPR di dalam hal ini dan SPR akan mengambil langkah-langkah yang sewajarnya seperti mana yang diperuntukan di bawah Akta dan Peraturan Pilihan Raya yang sedia ada.

Sekian, terima kasih.

Yang Ikhlas,

(AZHAR AZIZAN HARUN)
Pengerusi
Suruhanjaya Pilihan Raya Malaysia

[25] This letter was issued by the Election Commission and signed by its Chairman. The Election Commission is the authority in-charge for election in Malaysia. In this letter it states that applicant cannot vote or stand for elections for the next five years from 13 December 2018.

[26] As such, the letter contained a decision by a decision-maker that has adversely affected the applicant who is no longer eligible to vote or stand for election for five years from 13 December 2018. The decision is final and has disposed of the applicant's rights to vote and contest in the election.

[27] In the circumstances, it is a decision envisaged under O. 53 r. 2(4) which is amenable to judicial review.

[28] As to the merits of the application, the core issue here is whether the Election Judge's report dated 13 December 2018 has complied with sub-s. 37(1) of Act 5.

[29] The applicant contends that the report only states that the corrupt practice was with the knowledge of the candidate and not with the knowledge and consent of the candidate as required to be mentioned in the report under sub-s. 37(1)(a)(i) of Act 5.

[30] Consequently, the applicant submits that sub-s. 37(3) of Act 5 cannot be invoked as the Election Judge has failed to comply with the said sub-s. 37(1)(a)(i).

[31] For ease of reference, the relevant provisions in relation to this issue are the following:

(i) Section 37(1).

> 37. (1) At the conclusion of the trial of an election petition or of the hearing of an appeal against the determination of an Election Judge, the Election Judge or the Registrar of the Federal Court, as the case may be, shall also report in writing:
>
> (a) to the Election Commission, in the case of an election of a person to be a member of the Dewan Rakyat, a Legislative Assembly, the city council of the federal capital or of any other election that the Election Commission may be authorised to conduct; or
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> (b) in the case of any other election, to the State Authority:
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> (i) whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, or by this agent, and the nature such corrupt or illegal practice, if any; and
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> (ii) the names and descriptions of all persons, if any, who have been proved at the trial to have been guilty of any corrupt or illegal practice.

(ii) Section 37(3).

> (3) When an Election Judge or Registrar of the Federal Court reports that a corrupt or illegal practice has been committed by any person, that person shall be subject to the same incapacities as if at the date of the said report he had convicted of that practice and a person shall be subject to the same incapacities if he was a candidate at the election and the Election Judge or the Registrar of the Federal Court reports that such corrupt or illegal practice was committed with his knowledge and consent or by his agent.

[32] The wording of sub-s. 37(1)(a)(i) is plain and clear and it is the duty of this court to give it effect. The words used in this subsection must be given its plain grammatical meaning.

[33] The Federal Court in the case of *Dr Koay Cheng Boon v. Majlis Perubatan Malaysia* [2012] 4 CLJ 445; [2012] 3 MLJ 173 states:

> A statute is the written will of the Legislature and it is the fundamental rule of interpretation of a statute that it should be expounded according to the intent of Parliament. The courts must use the literal rule where a clear meaning of a statute will allow it, ie, interpret the statute literally, according to its ordinary plain meaning.

[34] Here, sub-s. 37(1)(a)(i) clearly states that the Election Judge shall report in writing, among others, as to whether the corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of the candidate.

[35] The usage of the word 'and' in the words 'knowledge and consent', in its plain grammatical meaning has to be read conjunctively. As such, the Election Judge's report shall state whether the corrupt practice is with the knowledge and consent of the candidate.

[36] To read the word "and" as "or" as submitted by the respondent is contrary to the plain meaning of the provision and with no acceptable justification.

[37] In the circumstances, the next pertinent issue for consideration of this court is whether the Election Judge's report contained the findings that the corrupt practice was with the knowledge and consent of the applicant.

[38] In order to determine this issue, it is important to highlight the relevant parts of the Election Judge's report pursuant to s. 37 of Act 5.

[39] The salient parts are the following:

(i) At para. (ii), it states among others:

> ... Berdasarkan kepada fakta-fakta yang dikemukakan di hadapan saya, walaupun terdapat percanggahan di dalam keterangan yang dikemukakan oleh saksi-saksi sama ada Responden atau Wan Rosdy yang telah memberikan wang tersebut, namun tidak dipertikaikan bahawa jumlah wang sebanyak RM200.00 telah diberikan dalam kehadiran Responden. Oleh yang demikian, saya mendapati bahawa Pemetisyen telah berjaya membuktikan fakta bahawa RM200.00 telah diberikan kepada Batin-batin tersebut dalam kehadiran Responden pada 30.4.2018.

(ii) Next, para. (iii)(a) where the Election Judge said this:

> Berkenaan dengan dakwaan ini, walaupun terdapat percanggahan keterangan terhadap identiti pemberi yang telah memberikan wang tersebut kepada Batin-Batin, sama ada melalui Wan Rosdy, Batin Abduh atau Achom, ianya adalah fakta bahawa wang sebanyak RM25,000.00 telah diberikan kepada Batin-batin yang hadir. Oleh yang demikian, sama ada wang tersebut telah diberikan oleh Responden, Wan Rosdy atau Achom, fakta yang tidak

dipertikaikan adalah kedua-dua Wan Rosdy dan Responden telah berkempen bersama-sama di kawasan tersebut, Justeru itu, tiada keraguan yang munasabah bahawa Responden terlibat dalam pengedaran wang tersebut, walaupun tidak secara langsung melalui dirinya, tetapi melalui Wan Rosdy atau Achom.

(iii) Further, at para. (iii)(c)(ii), the Election Judge reported *inter alia* as follows:

> Berkenaan dengan dakwaan ini, adalah tidak dipertikaikan bahawa terdapat percanggahan di dalam keterangan berkenaan siapakah sebenarnya yang telah memberikan wang berjumlah RM300.00 kepada Batin-batin tersebut. Walau bagaimana pun, terdapat persamaan di dalam keterangan saksi-saksi iaitu wang tersebut telah diberikan kepada mereka, yang merupakan pengundi atau pemilih berdaftar bagi kawasan pilihan raya tersebut. Dan yang lebih penting, Responden ada semasa wang tersebut diberikan. Oleh yang demikian, saya mendapati bahawa wang sebanyak RM300.00 tersebut telah diberikan di dalam pengetahuan dan kehadiran Responden.

(iv) In conclusion, the Election Judge in its report states the following:

> Berdasarkan sebab-sebab yang dinyatakan di atas, saya berpendapat bahawa Pemetisyen telah berjaya membuktikan melampaui keraguan munasabah bahawa perbuatan rasuah di bawah Seksyen 10(2) Akta 6 telah dibuktikan di mana wang telah diberikan kepada pengundi-pengundi secara langsung oleh Responden, atau secara tidak langsung melalui Wan Rosdy atau Achom, dan wang tersebut teah diberikan kepada pengundi sebagai dorongan untuk mengundi. Oleh yang demikian, saya mendapati bahawa terdapatnya perbuatan rasuah berkaitan dengan pilihan raya tersebut yang telah dilakukan dengan pengetahuan Responden selaras dengan Seksyen 32(c) Akta 5. Justeru itu, selaras dengan Seksyen 30(1) Akta 5, saya mengisytihatkan bahawa pilihan raya bagi kawasan Parlimen Cameron Highlands (P.078) yang diadakan pada 9 Mei 2018 adalah terbatal.

[40] Having read in totality the Election judge's report, in particular the highlighted parts reproduced above, I find, the report shows that the corrupt practice was committed with the knowledge and consent of the applicant.

[41] This is consistent with the judgment of the Election Judge where at para. 70 of the grounds of judgment the Election Judge said this:

> [70] With regards to section 37 of Act 5, I will certify this decision to the Election Commission and report that corrupt practice has been proved to have been committed with the knowledge and consent of the Respondent (Applicant) at the election, namely the giving of money to the voter to induce the voter to vote.

[42] In the circumstances, I find, the Election Judge's report has complied with the requirement of sub-s. 37(1)(a)(i) of Act 5 and as such sub-s. 37(3) is applicable in which the applicant is subject to the same incapacities as if at the date of the Election Judge's report, the applicant had been convicted of corrupt practice.

[43] Subsection 11(2) of Act 5 then provides that any person convicted for corrupt practice is barred from voting or stand for election for five years from the date of the conviction. Subsection 11(2) states:

> (2) Every person who is convicted of a corrupt practice shall, subject to any specific provision to the contrary in any written law relating to any election, by conviction become incapable of being registered or listed as an elector of of voting at any election or of being elected at any election, and if at that date he has been elected at any election, his seat shall be vacated from the date of such conviction
>
> Provided that such disability shall cease on the expiry of five years from such conviction.

Conclusion

[44] Based on the aforesaid reasons, the decision of the Election Commission *vide* its letter dated 28 December 2018 is in accordance with the law.

[45] The said decision is not tainted with any illegality, irrationality or unreasonableness that warrants a curial intervention of this court.

[46] Hence, the applicant's application for judicial review is dismissed with costs of RM5,000.